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12-14-2007

"THREE STRIKES" LAW. SENTENCING. STATUTE.

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DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

May 30, 2008

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND
PROPONENT (08190)

FROM:


KATHERINE MONTGOMERY
Associate Elections Analyst

SUBJECT: FAILURE OF INITIATIVE #1306

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named initiative statute filed with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: "THREE STRIKES" LAW. SENTENCING. STATUTE.

SUMMARY DATE: 12/14/07

PROPONENT: Francis X. Courser



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

December 14, 2007

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS/PROPONENT
(07265)

FROM:


KATHERINE MONTGOMERY
Elections Analyst

SUBJECT: **INITIATIVE #1306**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**"THREE STRIKES" LAW.
SENTENCING. STATUTE.**

The proponent of the above-named measure is:

Francis X. Courser
1696 W. 11th Avenue
Escondido, CA 92029

#1306

**“THREE STRIKES” LAW.
SENTENCING. STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 433,971
California Constitution, Article II, Section 8(b)
2. Official Summary Date: Friday, 12/14/07
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elec. Code § 336) Friday, 12/14/07
 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time within each
county. (Elec. Codes §§ 336, 9030(a)).Monday, 05/12/08
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elec. Code § 9030(b)).....Thursday, 05/22/08

(If the Proponent files the petition with the county on a date prior to
05/12/08, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elec. Code § 9030(b)).
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties.....Saturday, 05/31/08*
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elec. Code § 9030(d)(e)) Monday, 07/14/08

*Date varies based on the date of county receipt.

INITIATIVE #1306
Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 05/31/08, the last day is no later than the thirtieth working day after the county's receipt of notification). (Elec. Code § 9030(d)(e)).

- f. If the signature count is more than 477,369 or less than 412,273 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 412,273 and 477,369 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (EC §9030(f)(g); 9031(a)) Thursday, 07/24/08*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elec. Code § 9031(b)(c)). Friday, 09/05/08

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 07/24/08, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elec. Code § 9031(b)(c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elec. Code §§ 9031(d), 9033) Tuesday, 09/09/08*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 177 Cal.Rptr. 621; 63 Ops.Cal.Atty.Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 445-4752
Facsimile: (916) 324-8835
E-Mail: Krystal.Paris@doj.ca.gov

December 14, 2007

Debra Bowen
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, CA 95814

RE: Title and Summary for Initiative No. 07-0075
TITLE: "THREE STRIKES" LAW. SENTENCING. STATUTE.

Dear Ms. Bowen:

Pursuant to the provisions in sections 336 and 9004 of the Elections Code, enclosed please find a copy of the Title and Summary issued for the above-referenced initiative, along with the text of the proposed measure.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Krystal Paris", written over a horizontal line.

KRYSTAL PARIS
Initiative Coordinator

For EDMUND G. BROWN JR.
Attorney General

Enclosures

Proponent(s) public information:

Francis X. Courser
1696 W. 11th Avenue
Escondido, CA 92029

Date: December 14, 2007
Initiative No. 07-0075

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

“THREE STRIKES” LAW. SENTENCING. STATUTE. Prohibits increased sentencing terms for repeat felony offenders under new “Three Strikes” law except when current offense is a serious or violent felony. Authorizes re-sentencing under the new law for offenders serving indeterminate life sentences provided that the sentence was not imposed for a second strike. Provides that felons convicted of specified crimes, including murder, certain crimes involving firearm use, and certain sex or drug offenses, are not eligible for the benefits of the new law. Restricts Legislature’s authority to modify certain sentencing schemes or enhancements.

Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Net state savings – primarily to prison operations – potentially in the tens of millions of dollars annually initially, increasing to several hundreds of millions of dollars annually within a decade. Unknown state savings on a one-time basis for capital outlay associated with prison construction that would otherwise be needed, potentially as much as one billion dollars in the long term. Increased state and county costs of potentially a few tens of millions of dollars annually for jail and court-related costs. (Initiative 07-0075.)

October 20, 2007

VIA FEDERAL EXPRESS DELIVERY

Ms. Toni Melton
Initiative Coordinator
Office of the Attorney General
State of California
1300 I Street
Sacramento, CA 95814

RECEIVED
OCT 22 2007
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Request for Title and Summary for "*The Three Strikes Reform Act of 2008*"

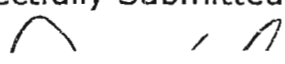
Dear Ms. Melton,

Enclosed please find text of the proposed initiative, titled *The Three Strikes Reform Act of 2008*.

I have also included with this letter the required signed statement under California Elections Code, Section 9608, my voter registration address, and payment in the amount of \$200 to the State of California, Office of the Attorney General.

Thank you for your attention to this filing. Should you have any questions please contact me at the phone number listed.

Respectfully Submitted,



Francis X. Courser

Dated: 10-20-2007

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Section 667, including the addition of a new Section 667.2, and Section 1170.12, relating to the sentencing of individuals for serious or violent felonies who have been previously convicted of serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. TITLE

This initiative shall be known as may be cited as the "Three Strikes Reform Act of 2008."

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California do hereby find and declare that:

- (a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who committed serious and/or violent felonies;
- (b) Proposition 184 did not exclusively apply enhanced sentences to repeat offenders who committed serious and/or violent felonies;
- (c) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as second and/or third strikes;
- (d) Since its enactment, Proposition 184 has been used to enhance the sentences of tens of thousands of persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than one billion dollars (\$1,073,863,896.00) per year.

SECTION 3. PURPOSES

The People do hereby enact this measure to:

- (a) Continue to protect the people from repeat offenders who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who commit serious and/or violent crimes and who have been previously convicted of serious and/or violent felonies.

(c) Ensure proportionality in sentencing patterns.

(d) Reduce the amount of money spent on corrections by over \$1 billion a year.

SECTION 4. AMENDMENTS TO SECTION 667 OF THE PENAL CODE

(This format presents struck wording in [strikeout] and new wording in [***bold italics.***])

Section 667 of the Penal Code is hereby amended to read:

§ 667. Habitual criminals; Enhancement; Exceptions

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

~~(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.~~

~~(3)~~ (4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7.

~~(4)~~ (5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the ~~Legislature~~ ***people of the State of California*** in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a ***serious and/or violent felony or any felony specified in subparagraph (B) of paragraph (1) of subdivision (e) of Section 667 or in subparagraph (C) of paragraph (2) of subdivision (e) of Section 667,*** and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been

pled and proved that the defendant has one or more prior ***serious and/or violent*** felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

- (1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent ***serious and/or violent*** felony conviction.
- (2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.
- (3) The length of time between the prior ***serious and/or violent*** felony conviction and the current felony conviction ~~shall not affect~~ ***may be considered by the court in the imposition of sentence, provided that the most recent serious and/or violent felony occurred more than 15 years before the date of the current offense and the defendant was free of prison or jail custody for at least 5 years before the date of the current offense.***
- (4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.
- (5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.
- (6) If there is a current conviction for more than one ***serious and/or violent*** felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).
- (7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.
- (8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a ***serious and/or violent*** felony shall be defined as:

- (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7, as a serious felony in this state. The determination of whether a prior conviction is a prior ***serious and/or violent*** felony

conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior **serious and/or violent** felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A **prior** conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison **shall constitute a—**A prior conviction of a particular **serious and/or violent** felony **if the elements of the crime, as defined by that jurisdiction's statutory or common law, necessarily include all of the elements of a California serious or violent felony** ~~shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.~~

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2), as a felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a **one or more** prior **serious and/or violent** felony convictions:

(1) (A) *Except as provided in subparagraph (B), If if a defendant has one prior serious and/or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.*

(B) If a defendant has one prior serious and/or violent felony conviction as defined in subdivision (d) that has been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the determinate term, or the minimum term for an indeterminate term, shall not be twice the term otherwise provided as punishment for the current felony conviction, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, except for Sections 266, 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, and paragraph (1) of subdivision (b) and subdivision (e) of Section 288a.

(iii) During the commission of the current offense, the defendant personally used a firearm or deadly weapon, was personally armed with a firearm or deadly weapon, or committed an act intended and likely to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(a) a “sexually violent offense” as defined in subdivision (b) of section 6600 of the Welfare and institutions Code;

(b) any felony sex offense for which the defendant was required to register pursuant to Section 290;

(c) any homicide offense defined in Sections 187 to 191.5, inclusive;

(d) any serious and/or violent felony offense punishable in California by life imprisonment or death.

(2) (A) *Except as provided in subparagraph (C), If if a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (d), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of*

life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~greater~~ **greatest** of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (d) that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the determinate term, or the minimum term for an indeterminate term, shall be twice the term otherwise provided as punishment for the current felony conviction, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, except for Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, and paragraph (1) of subdivision (b) and subdivision (e) of Section 288a.

(iii) During the commission of the current offense, the defendant personally used a firearm or deadly weapon, was personally armed with a firearm or deadly weapon, or committed an act intended and likely to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious and/or violent felonies:

(a) a “sexually violent offense” as defined in subdivision (b) of section

6600 of the Welfare and Institutions Code;

(b) any felony sex offense for which the defendant was required to register pursuant to Section 290;

(c) any homicide offense defined in Sections 187 to 191.5, inclusive;

(d) any serious and/or violent felony offense punishable in California by life imprisonment or death.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a *one or more* prior *serious and/or violent* felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) ~~The prosecuting attorney,~~ *Either party, or the court on its own motion,* may move to dismiss or strike a prior *serious and/or violent* felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the *serious and/or violent* felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior *serious and/or violent* felony conviction, *or that it is in the furtherance of justice to do so,* the court may dismiss or strike the allegation.

~~(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).~~

~~(hg)~~ All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on *October 20, 2007, or as amended by this Act.*

~~(ih)~~ If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

~~(ji)~~ The provisions of this section shall not be amended by the Legislature except by *referral of statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.*

SECTION 5. AMENDMENTS TO SECTION 667.1 OF THE PENAL CODE

(This format presents struck wording in [strikeout] and new wording in *bold italics.*)

§ 667.1. References in Section 667.1 to existing statutes

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on *October 20, 2007*~~the effective date of this act~~, including amendments made to those statutes by this act.

SECTION 6. RE-SENTENCING OF QUALIFIED INDIVIDUALS

(This format presents and new wording in *bold italics*.)

Section 667.2 is added to Penal Code to read:

§ 667.2 (a) The re-sentencing provisions under this section and related statutes are intended to apply exclusively to persons currently serving an indeterminate term of life imprisonment pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence would not have been an indeterminate life sentence had the amendments made by this act been in effect at the time of sentencing.

(b) Subject to the exclusions and limitations set forth below in subdivisions (b) and (c), any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, may file a petition for writ of habeas corpus, within three years after the effective date of this act, to request re-sentencing in accordance with the provisions of subdivision (e) of Section 667, as amended by this act.

(c) No person who is currently serving a term of imprisonment for a "second strike" conviction imposed pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12, shall be eligible for re-sentencing under the provisions of this section.

(d) The petition for writ of habeas corpus described in subdivision (b) shall specify all the currently charged felonies, which resulted in the sentence under paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or both, and shall also specify all of the prior convictions alleged and proved under subdivision (d) of Section 667 and subdivision (b) of Section 1170.12.

(e) A person who meets the requirements of subdivision (b) of this Section may request appointment of counsel by sending to the sentencing court a written request for representation by counsel to prepare a petition under this section and for purposes of re-sentencing.

(f) If the court determines that the person filing a petition for writ of habeas corpus is eligible to be re-sentenced under the criteria set forth in subdivision (b) and is not excluded by the disqualifying factors in subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, and/or subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12, and the district attorney does not prove, by a preponderance of the evidence, that the person poses an

unacceptable danger to the safety of others, the court shall re-sentence that person in accordance with the Three Strikes statutes as amended by this act, unless another law in effect prior to October 1, 2007, provides for a longer sentence. The court shall take all reasonable steps to complete action on the petition within 180 days of receipt.

(g) Under no circumstances may re-sentencing under this act result in the imposition of a term longer than the original sentence.

(h) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for re-sentencing may waive his or her appearance in court for the re-sentencing, provided that the accusatory pleading is not amended at the re-sentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(i) Nothing in this Section is intended to diminish or abrogate any rights or remedies otherwise available the defendant.

(j) Notwithstanding the requirement in subdivision (b) that a petition for re-sentencing be filed within three years of the effective date of this act, a court may accept and act upon a petition filed later if the person filing the petition shows good cause as to the reasons for delay.

(k) A defendant whose petition for re-sentencing is denied by the court on grounds that the person poses an unacceptable danger to the safety of others may re-apply for re-sentencing no sooner than three years after such a denial.

(l) Nothing in this and related Sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

SECTION 7. REPEAL OF SECTION 1170.12 OF THE PENAL CODE

(This format presents struck wording in [strikeout] and new wording in ***bold italics.***)

§ 1170.12. The People of the State of California find that Penal Code Section 1170.12, enacted by the Legislature before voters adopted Proposition 184 at the November 8, 1994, General Election, is superseded and rendered moot by the enactment of Penal Code Section 667 and the amendments in this statute. The substance of Section 1170.12 is therefore hereby repealed. Notwithstanding this repeal, no person convicted of or imprisoned for an offense or penalty enhancement under this section shall be entitled to any relief, change in sentence or early release from prison unless such relief is specifically provided for under the new Penal Code Section 667.2. Aggregate and consecutive terms for multiple convictions; Prior conviction as prior felony; Commitment and other enhancements or punishment

~~(a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:~~

~~(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.~~

~~(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.~~

~~(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.~~

~~(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.~~

~~(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 Part 3 shall not exceed one fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.~~

~~(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.~~

~~(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.~~

~~(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.~~

~~(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:~~

~~(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7, as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:~~

~~(A) The suspension of imposition of judgment or sentence.~~

~~(B) The stay of execution of sentence.~~

~~(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.~~

~~(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.~~

~~(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.~~

~~(3) A prior juvenile adjudication shall constitute a prior felony conviction for the purposes of sentence enhancement if:~~

~~(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and~~

~~(B) The prior offense is~~

~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~

~~(ii) listed in this subdivision as a felony, and~~

~~(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and~~

~~(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

~~(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:~~

~~(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.~~

~~(2)(A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of~~

~~(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or~~

~~(ii) twenty-five years or~~

~~(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.~~

~~(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.~~

~~(d) — (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).~~

~~(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.~~

~~(e) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).~~

SECTION 8. Effective Date

Except as otherwise provided, the provisions of this Act shall become effective January 1, 2009, and its provisions shall be applied prospectively.

SECTION 9. Amendment

This Act may be amended only by a statute approved by the electors.

SECTION 10. Severability

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.